

(1966) 11 AHC CK 0038
In the Allahabad High Court
Case No : Second Appeal No. 4860 of 1960

The State of Uttar Pradesh

APPELLANT

Vs

Ram Saran

RESPONDENT

Date of Decision : 08-11-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Civil Procedure Code, 1908 (CPC) — Section 100
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1967) 37 AWR 392

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a second appeal by the State of Uttar Pradesh from the decree of the Civil Judge of Moradabad reversing that of the Munsif, Moradabad and decreeing the Plaintiff-Respondent's suit for a declaration that he is still in the service of the State Govt. and for recovery of Rs. 1,490/8/- as arrears of pay.

2. The Plaintiff alleged in his plaint that he was appointed as a peon in 1950 at Kanth and confirmed on 22-5-1950; he was drawing a pay of Rs. 40/8/- per month; that a false report was filed against him by a patwari who had a grudge against him and he was prosecuted u/s 406 of the IPC; he was acquitted by the Railway Magistrate; and he then made several applications to the authorities for re-installment but without success. He filed this suit for a declaration that he continued in service and for recovery of Rs. 1,490/8/- as arrears of pay.

3. The State resisted the suit and pleaded that the Plaintiff was not entitled to any declaration nor any salary. It alleged that the Plaintiff was appointed as a temporary servant and was never confirmed. It further alleged that after his criminal prosecution he was suspended and though he was acquitted his services were terminated because of reports that he was a man of doubtful character.

4. The trial court held that the Plaintiff was a temporary servant and that the government had a right to terminate his services. Accordingly, it dismissed the suit. On appeal the learned Civil Judge agreed that the Plaintiff was a temporary servant but held that his services had never been terminated and therefore, he was entitled to a declaration of his continuance in service and for arrears of pay. The State has come to this Court in second appeal.

5. Mr. T.N. Sapru, learned Counsel for the State, argued that the finding of the lower appellate court that the Plaintiff-Respondent's services had not been terminated is erroneous. But it is a finding of fact and this Court cannot interfere with it in second appeal unless it is vitiated on any of the grounds specified in Section 100 Code of Civil Procedure. Moreover, the learned Judge held that the State had not produced any order terminating the services of the Respondent. I asked Mr. Sapru whether he could produce the order even at this stage and he was unable to do so. It appears to me that the authorities neglected to pass the formal order terminating his services. Or, it may be that after his acquittal the authorities realised that the Respondent's services could not be terminated without giving him an opportunity to show cause against the action proposed to be taken against him. These are matters for speculation. Whatever the reason may be, the fact remains that The State did not terminate his services. Now it cannot rely on a decision which could have been but was never made.

6. Mr. Sapru then argued that the court below should not award the Respondent a specific sum as arrears of pay but leave it to the State Government to decide the question of his pay after acquittal. Learned Counsel relied on Rules 52, 53 and 54 of the Financial Handbook, Vol. II issued under the authority of the Government of Uttar Pradesh. But I don't think these rules help the case of the State. Rule 54 is as follows:

54. When the suspension of a government servant is held to have been unjustifiable or not wholly justifiable; or

When a government servant who has been dismissed, removed or suspended, is reinstated;

the revising or appellate authority may grant to him for the period of his absence from duty-

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or

(b) if otherwise, such proportion of pay and allowances as the revising or appellate authority may prescribe.

In a case falling under Clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs.

Applying this rule to the Respondent's case, he was entitled to the full pay if he was honourably acquitted. I have seen the judgment of the Railway Magistrate who acquitted him. It indicates that the case of the prosecution was disbelieved. In my opinion, if in a criminal trial of a government servant the prosecution witnesses are disbelieved and there are no remarks by the court casting doubts on the servant's conduct, he will be deemed to have been honourably acquitted as contemplated under Rule 54. In the present case the prosecution witnesses were disbelieved and there is no remark against the Respondent in the judgment of the criminal court. Therefore, he was honourably acquitted and entitled to the full pay to which he would have been entitled if he had not been suspended.

7. The appeal is dismissed with costs.